

MEMORANDUM OF LAW

DATE: March 3, 1987

TO: Tibor Varga, Senior Civil Engineer, Water
Utilities Department

FROM: City Attorney

SUBJECT: Capacity Fees for County Property at 3851 -
3853 Rosecrans, San Diego, California

In response to our letter of February 24, 1987, the County of San Diego has formally requested a waiver of water and sewer capacity fees as described. See attached letter of February 25, 1987.

That being the case, these capacity charges against the county for publicly owned and used property are prohibited under authority of *San Marcos Water Dist. v. San Marcos Unified School District*, 42 Cal.3d 154 (1986). The Supreme Court of California ruled such a capacity fee sought for anticipated or future discharges is akin to an assessment and as such cannot be levied against publicly owned and used property. The court ruled:

....

Under the rule we adopt, no matter how the form of the fee is varied (i.e., whether based on actual or anticipated use, or unrelated to use; whether a one-time fee or monthly fee; and whether charged to all property owners or only to users of the sewer system), the purpose of the fee will determine whether or not public entities are exempt from paying the fee. In sum, a fee aimed at assisting a utility district to defray costs of capital improvements will be deemed a special assessment from which other public entities are exempt.

San Marcos Water Dist., *supra* at 164
and 165

The instant capacity fees being for capital improvements, the City cannot collect same against the County of San Diego.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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ML-87-17